

Civil Wars and the Right to Self-Determination

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Received: August 27, 2013 Accepted: September 9, 2013 Online Published: October 16, 2013

doi:10.5539/ilr.v2n1p129

URL: <http://dx.doi.org/10.5539/ilr.v2n1p129>

Abstract

Thucydides was the first analyst of civil war: the Peloponnesian War between Athens and Sparta (431-404 BC). Since then, the technology of war has radically changed but not the nature of man. Most of the wars of the nineteenth and twentieth centuries were civil wars and most of these wars were caused by political, economic and legal factors and by the quest for secession. The civil wars of the twenty-first century are not different from those of the previous centuries.

The object of this article is to analyse the causes and legality of civil wars and assess critically the scope of peoples' right to self-determination in international law with a view to determining whether the right (as it stands) can be used by a racial or religious group in a state to effect radical transformation of the whole state or to justify secession from the state.

Finally, the feasibility and desirability of reconceptualising peoples' right to self-determination to justify secession in case of unrelenting persecution, when it is clear that attempts to achieve internal self-determination have failed, are evaluated.

Keywords: civil wars, international law, right to self-determination, secession

“War has no

Constant dynamic;

Water has no

Constant form.” (Tzu, 2002)

“War is not merely a political act,

but also a real political

instrument, a continuation of

political commerce, a carrying

out of the same by other means.”

(Clausewitz, 1968)

1. Introduction

Philosophers of war from Thucydides through Labeo and Cicero to Ulpian and Clausewitz have sought, without success, a single explanation for war. Philosophical analyses of war have often distinguished ideological, political, economic and legal (constitutional) factors as underpinning conflicts which have induced international and civil wars. Thucydides, the Greek historian with philosophical interest, was the first analyst of civil war: the Peloponnesian War between Athens and Sparta (431-404 BC). In brilliantly written debates and speeches, reflecting the training under various Sophists (Note 1), he elaborated on the decisions of war and stated that people cared less for justice than for their own narrow interests (Connor, 1984). His view on human nature was to influence great jurists from Cicero (106-43 BC) to Ulpian (Note 2) (the Roman jurist born in Syria in the second century AD) and Hobbes. Much of the ideas about war and peace in the sixteenth century which

dominated contemporary discussions on war – whether civil or international – fell into two differentiated traditions: the ‘humanist’ or oratorical and the ‘scholastic’ or the theological. For the humanists (Thucydides, Labeo, Cicero and Ulpian), war for glory is justifiable and war could legitimately be made for imperial power. This view never vanished from European minds, though it was contested throughout the Middle Ages. The scholastic view stated in Molina’s *De Iustitia et Iure* (1593) distinguished between *defensive* war (open to anyone – private or public – as long as the victims are suffering from an immediate and actual attack) and *offensive* war which involves the punishment of a State for an injury committed by its ruler or subject or recovery of property which has been wrongly taken. The scholastic tradition was elaborated by two Dominican clerics Bartolomé de las Casas (1474-1566) and Francisco de Vitoria (1486-1547). Vitoria’s lecture, as a professor of theology at the University of Salamanca on the rights of conquered Indians in the New World established him as a founder of international law. The principles he enunciated influenced later theorists such as Hugo Grotius, Samuel Pufendorf, Christian Wolff and Emerich de Vattel (Note 3). Humanist and scholastic theories of war dominated theorising in the West. But recently there is a noticeable attraction to Chinese philosophy of war especially to the work of Sun Tzu (Note 4) (a contemporary of Confucius) by two renowned American political theorists – Francis Fukuyama (Note 5) and Henry Kissinger (Note 6). This attraction is partly due to the rise of China as a super power and partly due to the fact that civil wars are the dominant form of contemporary war.

The term “civil war” is not a term of art. Several definitions have been proffered. A “civil war” is defined as “a violent struggle over political control of a state occurring entirely within the geographical boundaries of that state” (Note 7). The post-independence war – shorn of the secession attempt – in Congo fulfils these requirements. A war of national liberation – a conflict in which a people lacking statehood but organised within the framework of national liberation struggles for independence in order to achieve self-determination – also fulfils the requirements. Most of these national liberation movements were in Africa and have achieved self-government in their respective territories (Note 8), except the Palestine Liberation Organisation which has not attained statehood. The above definition excludes all wars of secession.

The term “civil wars” is also applied to occurrences in the past such as the American Civil War (1861-65) and the Spanish Civil War (1936-39). Even this application is contentious as some claim that because of outside involvement, the American Civil War or the Spanish Civil War was an international war. In order to obviate the above strictures, we adopt Malanczuk’s working definition which states that a “civil war” is “a war between two or more groups of inhabitants of the same state one of which may be government” (Malanczuk, 2009).

Bearing in mind the exhortations of Tzu (Note 9) and Clausewitz (Note 10), cited above, that there is no dynamic of war and that war is the continuation of policy by other means, we proceed to an evaluation of the following themes:

1. The legality of civil wars.
2. An appraisal of the causes of civil wars in Congo, Nigeria, Sudan, Liberia, Sierra Leone, Kosovo and Mali.
3. An evaluation of the Arab Spring and the civil war in Syria.
4. An evaluation of the scope of peoples’ right to self-determination with a view to determining (i) whether or not the right could be used to effect radical transformation of the whole society as is currently advocated by fundamentalist groups; and (ii) to consider the feasibility or desirability of reconceptualising the right to self-determination to authorise secession in case of extreme and unrelenting persecution of a racial or religious group once it is clear that attempts to achieve internal self-determination have failed.

To the first theme – the legality of civil wars – we now turn.

2. The Legality of Civil Wars

The most important civil war in the nineteenth century was the American Civil War (1861 - 65). It was important in its consequences – political, social and military. The parties to the war were the North (the Unionists or the United States and the South (the secessionist or confederacy). By eliminating slavery from the continent and preserving the Union, the civil war ensured that the United States would be a great power and lead the “free world”. But this achievement was at a great cost: battle losses cost over 200,000 lives and, from diseases, more than twice as much, a total of nearly 700,000 lives (Wright, 1971), more than all the wars in Europe during that century and only surpassed by the Nigerian Civil War in the twentieth century with a total loss of nearly one million lives (Jorre, 1972). The Spanish Civil War (1936 - 39) originated in internal tensions. On 17 July 1936, a military rebellion started in Africa and spread to the peninsula. Half of the country, the Nationalist rebels led by Generals José Sanjurjo, Emilio Mola and Francisco Franco were supported by Germany and Italy. The other half

stayed under the control of the legitimate government variously known as Popular Front, Republicans or Loyalists and were supported by the Soviet Union and the international brigades. It was a proxy war but no significant international law precedents emerged from this civil war (Thomas, 1971).

Most of the wars fought since 1945 have been civil wars. A civil war may be caused by the desire to form a new state (the Nigerian Civil War 1967-70, the Civil Wars in Sudan 1955-1972 and 1983-2005 and Mali 2012 to date) or fought for the control of a state (Sierra Leone, Liberia and Syria). Ideologies which transcend national frontiers are not only the cause of civil wars as in the case of post-independence crisis in the Republic of Congo (1960-65) but also increase the danger of such civil wars developing into international wars. Furthermore, the politics of coltan (80 per cent of the world's reserves lie in Eastern Congo) which is dense in silicate ideal for digital technologies and the contestation between rebel militias and transnational corporations have fuelled genocidal campaigns in the Democratic Republic of Congo since the surge to remove Mobutu Sese Seko and his eventual removal.

The rules of international law governing the legality of war are discussed under two Latin names: *ius ad bellum* (the rules of international law governing the legality of the use of force by states) and *ius in bello* (the rules by which international law regulates the actual conduct of hostilities once the use of force has begun). The term "international humanitarian law applicable in armed conflict" is being used for *ius in bello*.

In this excursus, we shall discuss the scope of *ius ad bellum*: the rules governing the use of force in civil wars. The two principal sources of the *ius ad bellum* since 1945 have been Articles 2 (4) and 51 of the UN Charter. Article 2 (4) of the UN Charter states:

"All members shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

The prohibition in Article 2 (4) above has to be read conjunctively with Article 51 of the UN Charter, the relevant part of which states:

"Nothing in the present Charter shall impair the inherent right of an individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

Article 2 (4) prohibits the use of force against territorial integrity or political independence of another state, irrespective of whether the use of force amounts to war. Any use of force is prohibited if it cannot be justified by reference to the right of self-defence recognised in Article 51 of the Charter. The right of self-defence permits only the use of force that is *necessary* and *proportionate* to the danger (Brownlie, 1963; Brownlie, 2003). A more complicated issue is the lawfulness of intervention by other states in a civil war. Two scenarios are possible: (i) other states supporting insurgents; and (ii) other states supporting established authorities.

(i) *Other states supporting insurgents*

In international wars, the rules of neutrality give clear guidance on the kinds of assistance that can be provided by neutral states. The rules are not so clear in civil wars. As a general rule, foreign states are forbidden to give help to insurgents in a civil war. The General Assembly Resolution 2131 (XX) declares that:

"no state shall organize, assist, finance or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

The rule stated in this resolution – repeated in later resolutions – has been reaffirmed by the International Court of Justice in **Nicaragua v USA** (Note 11). In that case, it was held that the United States had broken international law by aiding the contras who were rebelling against the government of Nicaragua. It emphasised that participating in a civil war by "organizing or encouraging the organization of irregular forces or armed bands ... for incursion into the territory of another state" (Note 12) was not only an act of illegal intervention in the democratic affairs of a foreign state but also a violation of the principle of prohibition of force. The Court held that the mere supply of funds to the contras while an act of intervention in the internal affairs of Nicaragua did not in itself amount to use of force.

The Court also recognised the common Article 3 of the four Geneva Conventions of 1949 as an expression of fundamental principles of humanitarian law. Article 3, which protects civilians, members of the armed forces who have laid down their arms 'hors de combat' by sickness, the wounded and so on, applies to all civil wars. The problem is that it is difficult to distinguish between civilians and combatants since civil wars are often fought by guerrillas and irregular forces. The Second Protocol to the 1949 Conventions, signed in 1977, tackles

this problem by extending the laws of war to civil wars (Note 13). According to Article 1 (1), the Second Protocol to the 1949 Conventions applies to “armed conflicts”

“which took place in the territory of the High Contracting Party between its armed forces and dissident armed forces or other armed groups under responsible command ...”

It must be noted, however, that the term “armed conflicts” does not apply to “situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of similar nature” (Article 1 (2) of the Second Protocol to the 1949 Conventions).

(ii) Other states supporting established authorities

Two theories struggle for ascendancy. According to the first theory (or the ‘traditional view’), help given to established authorities in a civil war is always legal. This is based on the argument that the government is the agent of the state and until it is overthrown, it remains competent to ‘invite’ foreign troops into the state’s territory and seek other forms of foreign help. The rationale of “invitations to intervene” is that the consent of the established authorities does not conflict with the concept of sovereignty. However, this theory has been used to justify military intervention by two super powers: the Soviet Union in Hungary (1956), Czechoslovakia (1968) and Afghanistan (1979); and the United States in the Dominican Republic (1965) and Granada (1983).

The second theory simply states that the traditional view or “invitation to intervene” is open to abuse as we shall see in one of the civil wars discussed below.

3. Civil Wars in Congo, Nigeria, Sudan, Liberia, Sierra Leone, Kosovo and Mali

There is no single theory explaining civil wars, that is, wars carried on primarily between two or more groups of inhabitants of the same state one of which may be government. But there are lessons to be learnt from the post-independence civil wars in Congo, Nigeria and Sudan; and the wars in Kosovo and Mali. To these wars we now turn.

3.1 Congo

The first insight from Congo’s post-independence crisis is that the traditional view that help given by a foreign state to the established authority in case of internal conflict is always legal is subject to abuse. In May 1960, the Movement National Congolais or MNC Party, a nationalist movement led by Patrice Lumumba, won the parliamentary elections in Belgian Congo. The party appointed Lumumba as Prime Minister. The parliament elected as President Joseph Kasavubu of Alliance des Bakongo (ABAKO) party. The Democratic Republic of Congo attained independence on 30 June 1960. On 5 September 1960, Kasavubu dismissed Lumumba from office. Lumumba declared Kasavubu’s action unconstitutional and a political crisis ensued. Joseph Mobutu who has been appointed chief of the new Congo army by Lumumba took advantage of the leadership crisis. With financial support from the United States and Belgium, Mobutu not only paid his soldiers privately but also staged a successful coup d’état which neutralised both Kasavubu and Lumumba. This was during the period of Cold War and the aversion of the Western powers to communism and leftist ideology influenced their support for Mobutu who was seen to be anti-communist and Lumumba pro-communist. On 17 January 1961 Katanga forces and Belgian paratroopers kidnapped and executed Patrice Lumumba, the democratically elected Prime Minister of Congo. In January 1963, the attempt of the Katanga province which was rich in mineral resources to secede was crushed with the assistance of UN forces. Thus, for four decades until he was ousted, Mobutu plundered the treasury and murdered anyone who opposed him (Note 14).

The political economy of the civil wars that were the direct result of the post-independence crisis must now be examined. The Democratic Republic of Congo (DRC) is rich in mineral resources: it is the world’s largest producer of cobalt ore and a major producer of uranium, copper and industrial diamonds. More than 30% of the world’s diamond reserves are in the DRC. It is also estimated that 80% of the world’s reserves of coltan lie in the Eastern DRC. Tantalus, which is extracted from coltan, is used as a high-charge conductor for mobile phones and a variety of other products associated with digital technologies. The insatiable global demand for digital technologies drives the trade in coltan between foreigners and their Congolese collaborators – the local militias – and has turned coltan into what Mantz calls “the blood diamond of the digital age” (Mantz, 2008). Thus, coltan is traded for hard currency which in turn is used to buy arms for itinerant warlords who feature in the civil wars fought in the DRC (Smith, 2011). Clausewitz reminds us, “War is not merely a political act, but a real political instrument, a continuation of political commerce, a carrying out of the same by other means” (Clausewitz, 1968). The two civil wars and the Kivo conflict in the DRC must be read as the continuation of commerce by other means since “[c]ommerce between nations does not cease the days guns begin to speak” (Aron, 2009). But we must not overlook the role played by the Rwanda Tutsi-led Army in the DRC.

The Rwandan Genocide began on 6 April 1994 a few hours after the plane of the Hutu President of Rwanda was shot down at Kigali Airport killing the President. Over a period of 100 days, the Hutu killed between 500,000 and 1 million Tutsi. More than 100,000 sought refuge in neighbouring Congo. The Tutsi Rwanda Patriotic Front restarted their offensive and took control of Rwanda by mid-July of the same year. The villainous Tutsi-led Rwandan Army was to play a decisive role in two civil wars in Congo.

The first civil war (the anti-Mobutu civil war (Note 15)) was fought from 1996-1997 by a coalition of Rwandan and Ugandan armies with longtime opposition figures led by Laurent Désiré Kabila with two objectives: to control the mineral resources of Congo and to drive Mobutu out of Zaire (as Congo was then called). In May 1997 Mobutu fled the country and Kabila marched into Kinshasa, the capital, naming himself the President and reverting the name of the country to the Democratic Republic of Congo. However, a few months later, President Kabila, fearing the Tutsi led Rwandan army who were running his army were plotting a coup against him in order to give the presidency of Congo to a Tutsi who would report directly to the President of Rwanda, asked Rwanda army officers to leave. They did not leave the DRC as directed by Kabila but only retreated to Goma where they launched a new Tutsi-led movement called *Reassemblément Congolais pour la Démocratique* (RCD) to fight Kabila, their former ally. Again, Uganda, the erstwhile Kabila ally also formed another rebel movement called *Movement for the Liberation of Congo* (MLC).

The second civil war (the anti-Kabila civil war (Note 16)) was started in 1998 by the RCD and the MLC along with Rwanda and Uganda troops. Angola, Zimbabwe and Namibia were involved militarily on the side of the Congolese Government. Laurent Kabila was assassinated in 2001 and was succeeded by his son, Joseph Kabila. The Kivo conflict in the eastern DRC with a vast deposit of coltan was ignited by Laurent Nkunda, a former member of the RCD in Goma, who defected from the RCD with troops loyal to him and formed the National Congress for the Defence of the People (CNDP), again backed by Rwanda to launch an armed rebellion against the Congolese government.

While Mobutu's Congo has been a Cold War ally against communism in Africa, transnational corporations have created a new role for Joseph Kabila in Congo: a violent and unequal ally in global digital revolution.

3.2 Nigerian Civil War 1967-70

Nigeria, like Congo, attained independence in 1960 (on 1 October) as a Federal Government which comprises the Western, the Eastern and the Northern Regions. At the 1958 Constitutional Conference held in London, the premiers of Western and Eastern Regions believed, as the British Secretary of State for the Colonies had intimated, that the creation of more states would redress the balance between the North and the South. The Hausa dominated Northern Region opted for confederation with power to secede while the Western Region opted for classical federalism and Eastern Region for quasi-federalism. But the Secretary of State for the Colonies indicated that if the demand for more states was insisted upon either before or after the election in 1959, the British government had no alternative but to postpone the election. Professor T.O. Elias (who later became the President of the International Court of Justice) reiterated that the southerners, when they realised that more states were not going to be created agreed to confederation with power to secede but this was rejected by the British government (Elias, 1967). Had the southerners realised that federalism in a multi-ethnic society with a region like the North which could override the South could produce a winner-takes-all situation where losers become hostages to the winning faction, they would have opted for confederation with power to secede *ab initio*. Unfortunately, the southerners were outmanoeuvred.

After independence, the three principles of federalism, viz (i) separateness and independence of each government; (ii) mutual non-interference or intergovernmental immunities; and (iii) reasonable balance between the units of the federation (Wheare, 1963) were flouted by a 'Federal Government' dominated by Northerners. There was a breakdown of law and order in Western Region and Lagos. Chief Obafemi Awolowo, the leader of the Yoruba, a former Premier of Western Region and one of the architects of Nigeria's independence, was languishing in prison.

The army intervened in January 1966 immediately Mr. Harold Wilson (later Lord Wilson) the then Prime Minister of the UK, left Lagos after the Commonwealth Prime Ministers' Conference on H.M.S. 'Fearless'. Sir Ahmadu Bello (the Premier of Northern Region), Sir Abubakar Tafawa Balewa (the Federal Prime Minister), Chief S.L. Akintola (the Premier of Western Region) and Chief Festus Okotiebo (Minister of Finance) were killed in a coup d'état led by Ibo army officers. The army introduced a unitary government under the leadership of Major-General J.T.U. Aguiyi Ironsi.

In July 1966, the Northern army officers retaliated in a coup led by Col. Yakubu Gowon. General Aguiyi Ironsi, the head of the unitary government, and Col Adekunle Fajuyi, the Military Governor of Western Region, were

killed. The pogrom committed by Northerners on Ibos living in the North and in the armed forces compelled the Ibos (Biafrans) to secede. A civil war raged from 1967 to 1970. About one million Nigerians (civilians and soldiers) died (Note 17). It is worthy of note that if crude oil were not in the East (Biafra) in commercial quantity, the secession might not have been challenged and would have succeeded. Nigeria received military assistance from the Soviet Union. And yet, President Lyndon Johnson of the United States refused to intervene. Nigeria is now the largest producer of crude oil in Africa and the sixth largest producer in the world. Its crude oil ('Bonny Light') is the second best in the world, second only (in purity) to Libya's crude oil.

The Ibos (Biafrans) led by Col. C.O. Ojukwu lost the war. Their secession attempt failed but this was not the case in Sudan.

3.3 Sudan

The first civil war was caused by national oppression, undemocratic, authoritarian state system and imperial domination. The peace accord – the Addis Ababa Agreement – signed in 1972 did not last long before General Gaafar Nimeiry, the then strongman of Sudan, found inroads into it and finally abrogated it and introduced Sharia law in 1983 into a country comprising Nubis and Arab Muslims to the North and Christians and animists to the South (Note 18).

The second civil war was ignited in 1983 following the government's islamization policy. In 2004 Chad brokered negotiations in N'Djamena, leading to April 8 2004 Humanitarian Ceasefire Agreement. A final treaty was signed on 9 January 2005 in Nairobi giving the South autonomy for six years followed by a referendum on secession and stating that income from oilfields should be shared evenly between the North and the South. A referendum was held and South Sudan voted overwhelmingly for secession. Unlike Congo and Nigeria, the bid for secession succeeded in Sudan. South Sudan is the world's 193rd state and Africa's 55th.

'Blood Diamonds' and the Civil Wars in Liberia and Sierra Leone

The purpose of including Liberia and Sierra Leone as two theatres of civil war is to highlight the fact that ideologies which transcend national frontiers are not only the root cause of post-independence civil war in Africa but also make them frequent and increasing the danger of such civil wars turning into international wars.

In 1980, a military coup in Liberia led by Master Sergeant Doe of Krahn ethnic group, overthrew the Americo-Liberian government killing President William R. Tolbert Jr. and most of the Americo-Liberian government officials (Note 19). Doe formed the People's Redemption Council (PRC) to rule. Like Mobutu, Doe was regarded as a Cold War ally and received significant backing from the United States government. Doe adopted a new Constitution in 1985 and was elected President in subsequent elections that were internationally condemned as fraudulent. In 1989, the National Patriotic Front of Liberia led by Charles Taylor, a former employee of President Samuel Doe's government, launched an insurrection supported by neighbouring countries such as Burkina Faso and Côte d'Ivoire (Gershoni, 1997). By September 1990, Doe was captured and killed. A peace deal led to Taylor's election as president in 1997.

The brutal civil war in Liberia played a vital role in the outbreak of fighting in Sierra Leone, a country which relies on mining of diamonds for its economic base. Taylor received help from Foday Sankoh, the leader of the Revolutionary United Front (RUF) in Sierra Leone. It was reported that Taylor instigated the RUF to attack the bases of Nigerian dominated peacekeeping troops in Sierra Leone who were opposed to his tribal movement in Liberia (Gershoni, 1997).

Under Taylor's leadership, Liberia became a pariah state due to his use of blood diamonds and illegal timber exports to fund the RUF in the Sierra Leone Civil War (Richards, 2003). Between 1989 and 1996 the first civil war in Liberia had claimed the lives of more than 200,000 Liberians and displaced a million others into refugee camps in neighbouring countries.

The Second Civil War in Liberia began in 1999 when insurgents named Liberians United for Reconciliation and Democracy based in the northwest of Liberia launched an insurrection against Taylor. In March 2003, a second group of insurgents, the Movement for Democracy in Liberia, attacked from the southeast. Taylor resigned and went into exile in Nigeria where he was handed over to the Special Court for Sierra Leone for trial in The Hague.

3.4 Kosovo

Since Tito's death in 1980, the Socialist Federal Republic of Yugoslavia formed under Tito's Communist partisan army had been plagued by surging nationalism, separatism and inter- and intra-republican strife. Two examples will suffice: (i) the desire on the part of Slovenia, Croatia and Bosnia-Herzegovina and Macedonia to

secede; and (ii) Serbia's treatment of two million Albanians forming 90% of the Autonomous Province of Kosovo.

The Kosovo War was an armed conflict in Kosovo which involved Yugoslav forces and Albanian separatist forces (KLA) and Nato between 1998 and 1999. On 10 June 1999, the Security Council adopted a resolution 1244 (1999) which authorised the creation of an international military presence subsequently known as "KFOR" and an international civil presence (the United Nations Interim Administration Mission in Kosovo "UNMIK") and laid down a framework for the administration of Kosovo.

On 17 November 2007 elections were held for the Assembly of Kosovo, 30 municipal assemblies and their respective mayors (Note 20). The Assembly of Kosovo held its inaugural session on 4 and 9 January 2008. On 17 February 2008 (Note 21), in Pristina, the capital of Kosovo, the Assembly promulgated a declaration of independence. Two questions arise from this declaration: (1) Is the declaration of independence in accordance with international law? Put differently, has the population of Kosovo the right to create an independent state as a manifestation of a right to self-determination? (2) What are the legal consequences of the declaration?

We shall return to these questions later in the section on the right to self-determination and secession but first we must discuss the conflict in Mali, the Arab Spring and the civil war in Syria.

3.5 Mali

Mali attained independence from France in 1960 and was one of the earliest nations to make a declaration for human rights. After a long period of one-party rule, a coup d'état in 1991 led to the enactment of a Constitution and ushered in a multi-party system (Imperato, 1989).

On 22 March 2012, a group of junior army officers staged a coup d'état, seized the presidential palace, dissolved the government and suspended the Constitution. On 6 April 2012, Tuareg insurgents called the National Movement for the Liberation of Azawad (MNLA) declared the secession of a new state, Azawad, from Mali. Shortly the Islamist groups including Ansar Dine and Al-Qaeda in the Islamic Magreb (AQIM) who had helped MNLA defeat the government turned on the Tuareg and took control of the North with the goal of implementing Sharia Law in Mali. The oblique consequence of the Libyan crisis of 2011 was the outflow of weapons to the Sahel region which included Northern Mali. On 11 January 2013, the French Armed Forces, with the support of British troops, intervened and by 30 January they had retaken the North from the insurgents, at least, for the time being.

3.6 Arab Spring and Syria

The Arab Spring – an allusion to the Revolution of 1848 which is sometimes referred to as "Springtime of the People" and the Prague Spring in 1968 - refers to a wave of protests, demonstrations and civil wars which started in Tunisia on 18 December 2010 and swept, like wildfire, through the Arab world. Rulers in Egypt, Tunisia and Yemen were forced from power. Mu'ammarr Qadhafi was not only overthrown on 23 August 2011 but was also killed. Uniform techniques of civil resistance, demonstrations and the use of social media (made possible by tantalus and the political economy of violence in the Democratic Republic of Congo chronicled above) were used. There were major protests in Algeria, Iraq, Jordan, Kuwait, Morocco and Sudan; and Western Sahara. Minor protests took place in Djibouti, Lebanon, Mauritania, Oman and Saudi Arabia.

The *fons et origo* of the Arab Spring have been traced to numerous factors. Boyes (2012a) argued that the drawing up of the map of the Middle East after the collapse of the Ottoman Empire by Britain and France – the Sykes-Picot Agreement of 1916 – which sought to protect minorities in the region (e.g. the Alawites in Syria) by putting them in power in the newly created States was partly responsible. He, however, observed that the uprisings of 1848 and the toppling of communism in 1989 were inapplicable to the Arab World because the idea "that greater political choice and free speech could swiftly transform the Middle East" was "a Western mirage in the desert" (Boyes, 2012b). It has also been suggested that factors such as dictatorship or absolute monarchy, human rights violations and corruption are the causes and that Arab Spring triggered the Syrian Civil War (Manhire, 2012; Noueihed, 2012). These suggestions were, at best, half-truths. The whole truth could be found in "the confusing and often violent geopolitics of the Middle East" (Freedman, 2008). Lawrence Freedman, a distinguished historian of contemporary military and political strategy, contends that "the first radical wave" in the Middle East was led by Arab nationalism and its first leader was Gamal Abdel Nasser who became Egypt's leader after the coup to overthrow King Farouk in 1952. Ahmed Ben Bella was also a leading figure in the postwar Arab nationalist fight against colonialism who became the first president of newly independent Algeria on 1 July 1962 (Obituary, 2012a). Since then, many of the current crop of Arab leaders emerged out of the nationalist tradition and the influence of first wave remains but that it has lost its edge a long time ago (Note 22).

According to Freedman, the “second radical wave” is led by Islamists and the Muslim Brotherhood formed in Egypt in 1928 as a genuine mass movement and founded on a belief in the supremacy of Islamic law combined with a populist anti-colonialism. Freedman argues that many Islamic movements operating today are linked to books of its leading ideologist Syed Qutb who was executed in 1966 because he declared illegitimate any regime not based on Islamic law. Qutb’s ideas were so incendiary that the Muslim Brotherhood, though they believed in them, had to denounce them. Nasser used an assassination attempt to ban the Brotherhood. Anwar Sadat, Nasser’s successor, unwittingly removed the restraint (though not the formal ban) on the Brotherhood. This enabled them to open mosques, schools and banks. They were preparing for government. By 1978 Sadat saw the potency of the Islamic movement he had helped to unleash, and tried to rein it in but failed.

The cause of the Syrian civil war was not the Arab Spring just as the presence of oxygen is the condition, not the cause, of a fire. The cause of the Syrian civil war is Islamism, the “second radical wave” in the Middle East, which the Algerian, General Mohammed Lamari, fought against for over five decades and stopped from taking power in 1992 leading to a long civil war in Algeria (Obituary, 2012b).

Syria was established as a French mandate after World War I and attained independence in April 1946. Between 1958 and 1961 Syria entered into a brief union with Egypt to form the United Arab Republic with Nasser as President and Cairo as capital. This union was terminated by a military coup.

Hafez al-Assad took power in 1971 and an attempt to assassinate him in 1979 was brutally crushed. Bashar al-Assad took over power after his father’s death in 2000. Since March 2011, Syria has been embroiled in a civil war backed by Russia, China and Iran. (Syria signed a pact with Soviet Union in November 1956 providing a foothold for the Russians in the Middle East.) Arms are pouring into Syria for the government and insurgents and jihadists from all over the Arab world as the civil war intensifies. In November 2012, an umbrella organisation of opposition groups known as the National Coalition for Syrian Revolutionary and Opposition Forces was recognised as ‘the legitimate representatives of the Syrian people’ by Member States of the Gulf Cooperation Council and by France, Turkey, the United Kingdom, the Arab League and the European Union. Al-Nusr Front, a group of fighters who were credited with significant victories in some battles was declared a terrorist organisation by the United States. The pertinent question is: What are the problems with the Arab Spring and the civil wars discussed above? There are two problems. The first problem is that most of the civil wars were ignited by the quest for secession whether satisfied (as in Sudan) or defeated (as in Congo, Nigeria and Mali) or in abeyance as in Kosovo; and this raises the question whether or not the right to self-determination can justify secession by an oppressed minority. The second problem is that the recognition of any coalition in Syria as ‘the legitimate representatives of the Syrian people’ raises the issue of their right to self-determination and whether such a right includes the right of religious groups to radically transform the whole society whether in Egypt, Libya or Syria taking cognisance of the fact that there are in Syria, for example, 2.5 million Christians who support Bashar Al-Assad. These problems must now be broached.

4. Peoples’ Right to Self-determination and Secession

The principle of self-determination which, we are told, is “simply loaded with dynamite” (Note 23), has been traced to the Declaration of Independence of the United States of America (Note 24) of 4 July 1776 and to Lenin and the Bolsheviks and has evolved into peoples’ right to self-determination (Shivji, 1991; Thürer and Burri, 2012).

There are three stages in the evolution of the right to self-determination: (i) the Wilsonian period, that is, during World War I when President Woodrow Wilson championed the *principle* of self-determination but self-determination did not form part of the Covenant of the League of Nations and was, therefore, a political rather than a legal concept; (ii) the decolonisation phase where the illegitimacy of colonialism and the rights of those colonised by distant Western powers to become independent states were articulated; and (iii) the post-colonial phase where international law guarantees to individuals and non-colonised people a broader range of human rights including meaningful self-determination but excluding the right to independent statehood.

The “principle” of self-determination was mentioned thrice in the 1945 Charter of the United Nations (Note 25). It is worthy of note that neither self-determination nor minority right is mentioned in the Universal Declaration of Human Rights 1948. Under the moral and political imperatives of decolonisation, the vague “principle” of self-determination evolved into the “right” of self-determination. The evolution was demonstrated by the General Assembly’s 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (“Declaration on Colonial Independence”). It declares that:

“[a]ll people have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

It also maintains that

“[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”

Again, the General Assembly resolution 2625 (XXV) entitled “Declaration on Principles of International law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations” (Declaration on Friendly Relations) states, *inter alia*:

“Every State has the duty to promote, through just and separate action, realization of the principles of equal and self-determination of peoples ...”

The Declaration on Friendly Relations offers no definition of “peoples”. In the same vein, the Final Act of the Conference on Security and Co-operation in Europe (CSCE) – renamed the Organization for Security and Co-operation of Europe (OSCE) in 1994 – adopted in Helsinki by 35 European States, Principle VIII states:

“By virtue of the principles of equal rights and self-determination of peoples, all peoples have the right, in full freedom, to determine, when as they wish, their *internal* and *external* political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.”

However, Principle IV of the Final Act stipulates that “[t]he participating States will respect the territorial integrity of each of the participating States”. Thus, the scope of the principles of territorial integrity is confined to the sphere of relations between States.

The oppression of nations and nationalities discussed above (Nigeria, Sudan, Kosovo and Syria) has led to devastating civil wars and gross violations of the rights of peoples to self-determination. There are two aspects of self-determination: the internal and the external aspects. Internal self-determination is the right to an authentic self-government. External self-determination for colonial peoples ceases to exist under international law once it is implemented, that is, once the people have attained self-government. But internal self-government, unlike external self-determination, is an ongoing right of the people to choose its own political and economic regime. This right to internal self-determination exists under treaty law by virtue of Article 1 of the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) which entered into force in 1976 and were ratified by over 110 countries. The first Article of both Covenants is identical.

Article 1

- “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their own natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

In a similar vein, Article 20 of the African Charter on Human and Peoples’ Rights 1981 sets forth the right to self-determination:

- “1. All peoples have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their own political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonised or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.”

There are other treaties on peoples’ right to self-determination such as the Universal Declaration on the Rights of Peoples 1976 (The Algiers Declaration) which has been described as “a work of high idealism and a fairly high level of abstraction” which was produced by an *ad hoc* gathering of lawyers, political scientists, politicians and others and did not reflect the views of governments (Brownlie, 1988) and the American Declaration of Rights and Duties of Man promulgated by the Organization of American States.

There are two pertinent questions: (1) Does the ‘right’ to self-determination exist and, if it exists, who are the holders of the ‘right’? (2) Does the right to self-determination encompass the right to secede?

The answer to the first strand of the first question – whether or not the right exists is that since the 1970s judicial and quasi-judicial bodies have reconceptualised the right to self-determination. It is no longer a right of colonies to independence but a right of peoples to take part in decisions affecting their future. Although the International Court of Justice used the term “principle” rather than “right” in the **Western Sahara Advisory Opinion** (Note 26), the **Namibia Advisory Opinion** (Note 27) and the **Case Concerning Frontier Dispute (Burkina Faso v Mali)** (Note 28), the Court in its recent pronouncements has recognised the peoples’ “right” to self-determination. In **Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory** (Note 29), the Court referred to the “right” of people to self-determination and observed that

“[T]he existence of a ‘Palestinian people’ is no longer in issue.” (Note 30)

In the **Kosovo Advisory Opinion** (Note 31), the Court stated:

“During the second half of the twentieth century, the international law of self-determination developed in such a way to create a right of independence for peoples of non-governing territories and peoples subject to alien subjugation, domination and exploitation.” (Note 32)

The answers to the second strand of the first question – who are the holders of the right to self-determination – can be gleaned from the UN Charter and the **Kosovo Advisory Opinion**. The UN Charter attaches the “right to self-determination” to “peoples” and the United Nations Secretariat defines “peoples” as meaning “group[s] of human beings who may or may not comprise States or Nations” (Note 33) and the **Kosovo Advisory Opinion** put a gloss on “peoples”, viz. “peoples of non-governing territories or peoples who are subject to alien subjugation, dominated or exploited”. The Palestinians, the Kosovars and East Timorese (Note 34) are “peoples” as defined.

The second question is whether the right to self-determination encompasses secession. There are two sides to self-determination: (i) its democratic appeal; and (ii) its tendency to stimulate instability, disorder and even dismembering of a state. The right to internal self-determination is a right conferred on racial and religious groups in a state but the rights of racial and religious groups are subordinate to the principle of territorial integrity and political unity of the state. The question whether or not peoples’ right to self-determination includes the right to declare a state of independence, short of secession, was evaluated by the International Court of Justice in the **Kosovo Advisory Opinion** (Note 35).

The question put to the Court by the General Assembly was formulated in the following terms:

“Is the unilateral declaration of independence by the Provisional Institution of Self-Government of Kosovo in accordance with international law?” (Note 36)

The Court noted that its opinion was required on whether or not the declaration of independence was in accordance with international law and that question did not ask about the legal consequences (Note 37). Thus, the declaration of independence was separated from its legal consequences. Twelve countries participated in this proceeding, viz., France, Norway, Cyprus, Serbia, Argentina, Germany, the Netherlands, Albania, Slovenia, Switzerland, Bolivia, the United Kingdom, the United States of America and, of course, Spain because of the Catalonia Declaration of Independence alluded to later; and Kosovo, the authors of the declaration of independence, submitted a written contribution.

After the declaration of independence, the Republic of Serbia informed the Secretary-General that the declaration “represented a forceful and unilateral secession of a part of the territory of Serbia, and did not produce legal effect in Serbia or in the international order (Note 38).

The Court proceeded by considering the identity of the authors of the declaration by examining the preambular paragraphs and the operative part of the declaration. The Court noted that the authors of the Declaration of Independence met in Pristina the capital of Kosovo and that after years of internationally sponsored negotiations between Belgrade and Pristina that no mutually acceptable status outcome was possible. The Court also noted that the operative part of the Declaration of Independence of 17 February 2008 reflected the will of the Kosovars and declared Kosovo to be a democratic, secular and multi-ethnic republic which will “protect the rights of all the communities of Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.” (Note 39)

The Court decided that the “people” of Kosovo were the authors of the declaration and then proceeded to consider whether they had the right to make the declaration and whether such declaration violated international law.

In resolving these issues, the Court reiterated that there were numerous instances of declarations of independence in the eighteenth, nineteenth and early twentieth centuries: sometimes seriously contested but resulting in the creation of a new state and at others it did not. The Court contended that the State practice during this period pointed to the conclusion that international law contained no prohibition of declarations of independence. The Court noted that in the second half of the twentieth century the international law of self-determination developed from a right of self-determination for non-self-governing territories and peoples subject to alien subjugation and exploitation. The Court added that many states came into existence as a result of the exercise of the right but there were declarations of independence outside this context. The Court concluded that these latter cases did not point to the emergence in international law of a new rule prohibiting the making of declaration in such cases.

The Court, however, noted that some participants in the proceedings have contended that a prohibition of unilateral declarations of independence was implicit in the principle of territorial integrity enshrined in the UN Charter. Article 2 (4) of the Charter provides that:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in a manner inconsistent with the Purposes of the United Nations.”

The Court also noted Principle IV of the Helsinki Final Act (Note 40) but observed that the principle of territorial integrity is confined to the sphere of relations between states. The Court, therefore, concluded that the declaration of independence on 17 February 2008 did not violate international law and that the Security Council resolution 1244 (1999) did not bar the authors of the declaration from declaring independence from the Republic of Serbia. Hence, the declaration of independence did not violate Security Council resolution 1244 (1999).

The International Court of Justice in **Kosovo Advisory Opinion** is the harbinger of possibilities in reconceptualising the right to self-determination to justify secession. The term “secession” has been defined by the Supreme Court of Canada in **Re Secession of Quebec** (Note 41) as follows:

“Secession is the effect of a group or section of a State to withdraw itself from the political and constitutional authority of that State, with a view to achieving statehood for a new territorial unit on the international plane. In a federal State, secession typically takes the form of a territorial unit seeking to withdraw from the federation.” (Note 42)

The oppression of nations and nationalities and the asymmetric relationships foisted upon newly independent countries by their erstwhile colonial rulers (in Nigeria between the Hausa/Fulani and the Yoruba, Ibo and others; in Rwanda between the Hutu and the Tutsi, to mention a few) have led to devastating wars in Congo, Nigeria, Sudan, Liberia, Sierra Leone and Kosovo (discussed above) and gross violations of peoples’ rights to self-determination.

In Katanga (Congo) and ‘Biafra’ (Nigeria) the secession attempts failed but in Bangladesh in 1971 and South Sudan in 2011 the attempts succeeded. The **Kosovo Advisory Opinion** is that the declaration of independence in Kosovo does not violate international law but secession is not an issue in that opinion. And yet, Kosovo is not the only nationality or group seeking to effect secession in Europe or other parts of the world. There are other groups or nationalities attempting to effect secession from other states such as Catalonia (Note 43) (from Spain), Scotland (from the United Kingdom), South Ossetia (from Georgia), Nagorny Karabakh (from Azerbaijan), ‘Biafra’ (from Nigeria) and Azawad (from Mali).

The position of the CSCE/OSCE is that such crises in Europe could not be resolved by separatism but by peaceful negotiation respecting the territorial integrity of the states from which they are seceding. This position was assailed by Hannum in the following passage:

“The principle that borders should not be altered except by mutual agreement has been elevated to a hypocritical immutability and contradicted by the very act of recognizing secessionist states. New minorities have been trapped, not by any comprehensive legal principle, but by historical administrative borders drawn by undemocratic government” (Hannum, 1993).

What is to be done? The Opinion of the International Court of Justice on Kosovo is that general international law contains no prohibition of declaration of independence. Furthermore, it is also safe to assert that secession is neither recognised nor proscribed in international law. Cassese argues that the Declaration on Friendly Relations ranks at the level of customary law: that State practice in the UN from the 1970s evidences that the provision granting internal self-determination to *racial* groups persecuted by central government has become part of international law. He, however, reiterates that the Declaration clause relating to *religious* groups has not matured into a customary rule since no State practice since 1970 supported such evolution. In other words, religious

groups seeking radical transformation of the whole society do not come under the international law of self-determination (Note 44). Cassese argues that the preparation work on the Declaration of Friendly Relations warrants the contention that secession is implicitly authorised by the Declaration when one of the following conditions exists:

“[t]he central authorities of a sovereign State persistently refuse to grant participatory rights to a religious or racial group, grossly and systematically trample upon their fundamental rights, and deny the possibility of reaching a peaceful settlement within the framework of State structure.” (Note 45)

It is submitted that such conditions were instantiated in the preambular paragraphs and the operative part of the Kosovo declaration of independence of 17 February 2008 which definitely influenced the **Kosovo Advisory Opinion** stating that the declaration does not violate international law but stopping short of deliberating on secession which was not within its remit. Judge Cançado Trindade, in a separate Opinion, went a vital step further by arguing in favour of unilateral secession: that the current evolution of international law and international practice of States and international organizations provides support for the exercise of the right to self-determination by people under permanent adversity or in the case of systematic oppression and subjugation (Note 46).

However, a strong case has been made for the reconceptualisation of the peoples’ right to self-determination to justify secession. The argument goes like this: the recognition of the *right* to secede does not mean that every nation or people have a *duty* to secede in the Hohfeldian sense (Note 47), and that the very recognition of this right to secede and the democratic treatment of all nations and nationalities within a state would eventually lead to a voluntary union of nations, rather than a secession. After all, the *right* to secede belongs to the oppressed, and if a nation is not oppressed, the reason and rationale for secession evaporate (Note 48).

5. Summary and Conclusions

The civil wars discussed above from the American Civil War (1861-65) to the ongoing civil war in Syria corroborate the proposition that there is no theory of civil war because wars do not follow a particular pattern. Master Tzu, writing in classical Chinese, a halfway between poetry and prose, said: “War has no constant dynamic; Water has no constant form” (Tzu, 2002). In other words, a civil war proceeds *suo motu*, that is, it has its own momentum. The post-independence crisis of Congo was driven by ideology but not the two civil wars and the Kivo conflict which were driven by greed, the control of the vast mineral resources of the Congo or, in Clausewitzian terms, “the carry[ing] out of [commerce] by other means” (Clausewitz, 1968). The civil wars in Nigeria, Sudan, Kosovo and Mali were wars of secession while the Arab Spring and the civil wars in Libya, Tunisia and Syria were driven by Islamic fundamentalism: the quest for political power for the radical transformation of the whole society.

The technology of war has been radically transformed since Thucydides wrote his great historical narratives but not the nature of man. As long as the rivalry of men and regimes and oppression of minorities in sovereign states persist, there will be civil wars and the letters of history will be written in blood.

The outcome of the civil war in Syria is difficult to predict because of the influence of archipelago interests, namely, Russia and China (two BRIC states), Iran and the United States and the EU in Syria. Transition to democracy in Egypt, Libya and Tunisia is a moot point and the consequences of the Arab Spring in Saudi Arabia are too gruesome to contemplate. What emerges from our discussion of civil wars is that most of the post-1960 civil wars are wars of secession. Secession succeeded in Bangladesh and South Sudan but failed in Katanga (Congo), Biafra (Nigeria) and ‘Azawad’ (Mali) and was held in abeyance in Kosovo. Recent events in South Ossetia (Georgia), Catalonia (Spain) and Scotland (the United Kingdom) show conclusively that secession attempts will not go away in a hurry. In order to avoid civil wars of secession, we need to reconceptualise the peoples’ right to self-determination to justify secession in cases of unremitting persecution of a racial or religious group once it is clear that attempts to achieve internal self-determination have failed. This reconceptualisation is not only feasible but also desirable.

Acknowledgements

A version of this paper was presented on 2nd May 2013 as the author’s Professorial Fellow Lecture at Liverpool Hope University, United Kingdom. I thank those present for their comments. Thanks also to the anonymous referees for their informed and constructive comments.

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Notes

Note 1. The word "Sophists" came to be applied in the fifth century BC to a number of individuals who travelled widely in the Greek world giving popular lectures on a wide range of topics.

Note 2. See Honoré, (2002: 76-93).

Note 3. See Grotius (1916), Pufendorf (1991), Wolff (1934) and Vattel (1916).

Note 4. See Tzu (2002).

Note 5. See Fukuyama (2011: 99, 115).

Note 6. See Kissinger (2011: 25-32).

Note 7. See McNemar (1971: 244).

Note 8. Examples:

1. Angola – Government of Angola in exile (GRAE); Angola National Liberation Front (FNLA); Angola Popular Liberation Movement (MPLA), and National Union for the Complete Independence of Angola (UNITA).
2. Mozambique – Mozambique Liberation Front (FRELIMO).
3. Namibia – South-West Africa People's Organization (SWAPO).
4. Israel – Palestine Liberation Organization (PLO).
5. Rhodesia/Zimbabwe – United African National Council (ANU); Zimbabwe African People's Union (ZAPU).
6. South Africa – African National Congress (ANC) and Pan African Congress (PAC).
7. East Timor – Revolutionary Front for Independence of East Timor (FRETILIN). (This is not an exhaustive list).

Note 9. Above, note 4.

Note 10. See Clausewitz (1968).

Note 11. (1986) ICJ Reports 14.

Note 12. Above, note 11.

Note 13. For a critical analysis of the Second Protocol to the 1949 Geneva Conventions, see Cassese (1981: 416-439).

Note 14. For a critical analysis of the post-independence crisis in Congo, see Kisangani (2012: 37-64).

Note 15. For a critical analysis of the anti-Mobutu civil war in Congo, see Kisangani (2012: 119-140).

Note 16. For a critical analysis of the anti-Kabila civil war in Congo, see Kisangani (2012: 141-161).

Note 17. For three different accounts of the Nigerian civil war, see Achebe (2012), Jorre (1972) and Obasanjo (1980).

Note 18. For an in-depth analysis of the North-South Conflict in Sudan, see Jok (2001: 67-81, 131-152).

Note 19. The Americo-Liberians are the descendants of blacks from the United States most of whom were freed slaves supported by the American Colonisation Society, a private organisation, in 1847 to form a free country in African modelled on the United States.

Note 20. Report of the Secretary-General of the United Nations Interim Administration Mission in Kosovo, United Nations doc. S/2007/768.

Note 21. Above, note 20, United Nations doc. S/2008/211.

Note 22. See Freedman (2008:17).

Note 23. See Klabbers (2006: 186).

Note 24. The Declaration of the Independence of the United States proclaimed that the governments derive “their just powers from the consent of the governed” and that “whenever any Form of Government becomes destructive of these ends, it is the Right of People to alter and abolish it.”

Note 25. Articles 1 (2), 55 and 73 of the UN Charter.

Note 26. (1975) ICJ Reports 12, para 36.

Note 27. (1971) ICJ Reports 16, para 52.

Note 28. (1986) ICJ Reports 554, para 25.

Note 29. (2004) ICJ Reports 136.

Note 30. Above, note 29, para 118.

Note 31. (2010) ICJ Reports 403.

Note 32. Above, note 31, para 75.

Note 33. UNCIO Docs.XVIII, 657-658.

Note 34. *Case Concerning East Timor (Portugal v Australia)* (1995) ICJ Reports 89.

Note 35. *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo* (2010) ICJ Reports 403.

Note 36. Ibid., para 49.

Note 37. Ibid., para 51.

Note 38. Ibid., para 77.

Note 39. Ibid., paras. 74 and 75.

Note 40. Principle IV of the Helsinki Final Act stipulates that: “[t]he participating State will respect the territorial integrity of each of the participating States”.

Note 41. (1998) 2 SCR 217.

Note 42. Above, note 41.

Note 43. See the Declaration of sovereignty and the right to self-determination by the People of Catalonia, 20.1.2013, <http://www.catalannewsagency.com/print/3169> (accessed on 29.3.2013).

Note 44. See Cassese (1998: 120-121).

Note 45. See Cassese (1998: 119).

Note 46. (2010) ICJ Reports 523-617, especially para 184.

Note 47. Hohfeld (1966) pointed out the correlation of “right” and “duty”. To say that a person has a “right” is to imply a “duty” on another person not to interfere with that right. In other words, the person who has a “right” may be able to bring an action for compensation for interference with that right. At other times, he can do nothing. The correlation between “right” and “duty” is not perfect and Hohfeld never asserted that it was.

Note 48. See Shivji (1991).

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